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18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**

20 ANIBAL RODRIGUEZ, SAL CATALDO,
 21 JULIAN SANTIAGO, and SUSAN LYNN
 22 HARVEY, individually and on behalf of all
 23 others similarly situated,

24 Plaintiffs,

25 vs.

26 GOOGLE LLC,

27 Defendant.

28 Case No.: 3:20-cv-04688-RS

[PROPOSED] ORDER DENYING GOOGLE'S MOTIONS IN LIMINE NOS. 1-12

The Honorable Richard Seeborg

[PROPOSED] ORDER

Before the Court are Google's Motions *in Limine* Nos. 1-12 (Dkts. 519-530). For the reasons that follow, the Court DENIES Google's Motions.

Defendant's Motion in Limine No. 1 (Dkt. 519) is DENIED. The deposition testimony of Google's former senior engineer Mr. Blake Lemoine may be introduced into evidence and considered by the jury. Plaintiffs promptly disclosed Mr. Lemoine after he contacted Plaintiffs' counsel, and his testimony is relevant to how Google uses the at-issue data.

Defendant's Motion in Limine No. 2 (Dkt. 520) is DENIED. Evidence and argument pertaining to disgorgement of profits and unjust enrichment are relevant to the merits of each of Plaintiffs' claims and may be properly considered by the jury. *See In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 599–601, 606 (9th Cir. 2020).

Defendant’s Motion in Limine No. 3 (Dkt. 521) is DENIED. The first half of Google’s motion, which seeks to exclude evidence about “data leaks or misuse,” rehashes the same arguments this Court already rejected in the *Daubert* ruling. *See* Dkt. 511 at 5 (Professor Schneier may opine on the “negative consequences of the misuse of one’s data”). The second half of Google’s motion addresses just two trial exhibits (PX 364 and 365), which are at a minimum admissible under Rule 404(b)(2) to prove Google’s knowledge and intent and are also relevant to punitive damages.

Defendant's Motion in Limine No. 4 (Dkt. 522) is DENIED. Google's studies of users' privacy sentiments and expectations with respect to (s)WAA are highly probative of many of the issues in dispute. The fact that some of these studies did not occur in the United States does not render them substantially more prejudicial than probative. Indeed, Plaintiffs identified evidence that Google relied on these studies in creating its own global strategy, including in the United States. These documents may not be excluded under Rule 403 or any other Rule.

Defendant's Motion in Limine No. 5 (Dkt. 523) is DENIED. Google employees' statements regarding the state of user privacy at Google, Sundar Pichai's many public promises of control over what Google collects, Google's internal reaction to allegations concerning Web &

1 App Activity, and the history of the Web & App Activity privacy controls are all relevant to core
2 issues in this case. That includes the jury's inquiries into the reasonableness of Plaintiffs'
3 expectation of privacy; consent and permission; Google's state of mind; and the offensiveness of
4 Google's conduct. Google does not identify unfair prejudice that substantially outweighs the
5 probative value of this evidence.

6 **Defendant's Motion in Limine No. 6 (Dkt. 524) is DENIED.** Plaintiffs are permitted to
7 call Messrs. Kent Walker and Chris Palmer as impeachment witnesses or to otherwise respond to
8 any evidence or argument that Google valued user privacy.

9 **Defendant's Motion in Limine No. 7 (Dkt. 525) is DENIED.** Plaintiffs are permitted to
10 introduce specific act evidence, including Incognito-related documents as they go to Google's
11 motive, intent, and absence of mistake in regards to the claims at issue in this case.

12 **Defendant's Motion in Limine No. 8 (Dkt. 526) is DENIED.** This motion addresses three
13 exhibits that reflect meet-and-confer communications from Google's counsel to Plaintiffs and
14 contain factual representations relevant to data that Google provided. These documents are
15 therefore admissible under FRE 801(d)(2). In any event, as Plaintiffs note, the factual material
16 within these exhibits should become factual stipulations.

17 **Defendant's Motion in Limine No. 9 (Dkt. 527) is DENIED.** Google seeks to exclude
18 evidence about "alleged emotional distress damages." But Plaintiffs are not presenting a damages
19 model based on emotional distress. To the extent Google is seeking to exclude evidence about
20 harm, the motion is denied. Evidence of harm is at least relevant to Plaintiffs' invasion of privacy
21 claims, and the jury should be able to consider testimony regarding the harm caused by Google
22 when weighing the offensiveness of Google's conduct. Google is free to address that testimony or
23 evidence through cross examination.

24 **Defendant's Motion in Limine No. 10 (Dkt. 528) is DENIED.** This motion is mostly
25 moot. Plaintiffs have explained they will not seek to "litigat[e] the adequacy" of "each and every"
26 app privacy policy on a policy-by-policy basis, so there is no evidence or argument for the Court
27
28

1 to exclude. Insofar as Google also seeks to limit the arguments that can be made about the Google
2 Analytics Terms of Service (Mot. at 5), that request is DENIED.

3 **Defendant's Motion in Limine No. 11 (Dkt. 529) is DENIED.** Google claims that
4 Plaintiffs lack “any factual basis” to argue that Google collected “sensitive” data from (s)WAA-
5 off users. Mot. at 5. Among other flaws, this argument is procedurally improper. “A motion in
6 limine is not a proper vehicle for a party to ask the Court to weigh the sufficiency of the evidence
7 to support a particular claim or defense, because that is the function of a motion for summary
8 judgment.” *Int'l Metaphysical Ministry, Inc. v. Wisdom of Heart Church*, 2022 WL 19691043, at
9 *5 (N.D. Cal. Dec. 19, 2022).

10 **Defendant's Motion in Limine No. 12 (Dkt. 530) is DENIED.** Evidence and argument
11 pertaining to Google's revenues is relevant to the merits of each of Plaintiffs' claims and may be
12 properly considered by the jury.

14 || IT IS SO ORDERED.

16 DATED: _____

Honorable Richard Seeborg
Chief United States District Judge